



March 8, 2006

Director, Commodity Procurement Policy & Analysis Division
Farm Service Agency, Room 5755-S
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250-0512

Attn: Mr. Richard Chavez

RE: PROPOSED RULE: PROCUREMENT OF COMMODITIES FOR FOREIGN DONATION; 7 CFR PART 1496; RIN 0560-AH39

Maybank Shipping Company appreciates the opportunity to provide additional comments on the proposed rule cited above, as announced in the Federal Register on December 16, 2005 with comment period extended to March 9, 2006 as announced in the Federal Register on January 23, 2006.

In addition to our comments forwarded on January 11, 2006 (attached), we offer the following input for consideration in evaluating the process by which the subject rule is being evaluated and in implementing such an extensive change.

1. We reiterate that this proposed rule change is *not in compliance* with Executive Order 12866 – Regulatory Planning and Review. It is a *significant regulatory action* for the following additional reason (Subpara (4) Section 3(f) of EO 12866):

As mentioned in our previous input, *policy issues arising out of legal mandates* cannot be dismissed until they are identified and reviewed; this has not been accomplished. The mandate proffered as the principle upon which this rule is based is *lowest landed cost* but Cargo Preference Laws and Federal Contracting Laws must obviously be followed. In USDA's rush to implement its worthy goal of *lowest landed cost*, precepts of other statutes with equally compelling justification cannot merely be acknowledged and sidestepped. *Lowest landed cost* combines all costs (food aid purchase, domestic rail, trucking, warehousing, stevedoring, ocean transport and foreign overland delivery) which is at variance with statutory cargo preference priorities that are not predicated on any total cost combination strategy. Other government programs (e.g., military moves, Ex-Im Bank) cannot circumvent cargo preference laws based on a process that allows coupling of supplier costs with domestic and foreign overland transportation.

Recommendation: Since there exists a very real possibility of policy conflict, this rule should be treated as a *significant regulatory action* and submitted in accordance with the Unified Regulatory Agenda as specified in Section 4(b) of EO 12866.

2. The food aid bid process, be it a proposed single bid or the current double bid process, should use commonly accepted and internationally recognized shipping terms and practices in order to eliminate a major source of confusion in this already confusing process. For example, the Kansas City Commodity Corporation has redefined the well-known Incoterm "F.A.S." for something incomprehensible to a vessel operator. Due to this non-standard shipping term, the vessel operator is forced to utilize the terminal operator also as a stevedore, creating a conflict of interest in many respects including cargo liability.

Recommendation: Incorporate Incoterms and other industry-standard terminology in food aid programs.

I appreciate your continued consideration of our comments. Maybank Shipping Company would like to participate in any maritime industry forum convened to review this process. My points of contact for this action are: David Shimp and Philip Tomlinson at (843) 723-7891.

Sincerely,



Jack Maybank, Sr.
President

Copy to:
Office of Cargo Preference, U.S. Maritime Administration
Transportation Division, U.S. Agency for International Development
Ms. Gloria Tosi, President, American Maritime Congress